

1 Ethan Jones, WSBA No. 46911
2 Kathryn Marckworth, WSBA No. 46964
3 Yakama Nation Office of Legal Counsel
P.O. Box 150 / 401 Fort Road
Toppenish, WA 98948
(509) 865-7268
4 ethan@yakamanation-olc.org
kate@yakamanation-olc.org
5

6 Attorneys for the Confederated Tribes and
7 Bands of the Yakama Nation

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10
11 CONFEDERATED TRIBES AND
12 BANDS OF THE YAKAMA
13 NATION, a sovereign federally
14 recognized Native Nation,

Plaintiff,

15 v.
16 KLICKITAT COUNTY, a political
17 subdivision of the State of
Washington; KLICKITAT COUNTY
18 SHERIFF'S OFFICE, an agency of
Klickitat County; BOB SONGER, in
19 his official capacity; KLICKITAT
COUNTY DEPARTMENT OF THE
PROSECUTING ATTORNEY, an
agency of Klickitat County; DAVID
20 QUESNEL, in his official capacity,

Defendants.

Case No.:

YAKAMA NATION'S
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

21
22 Plaintiff, Confederated Tribes and Bands of the Yakama Nation ("Yakama
23 Nation"), signatory to the Treaty with the Yakamas of June 9, 1855, 12 Stat. 951
24 (1859), alleges as follows:
25
26

YAKAMA NATION'S COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF — 1

YAKAMA NATION
OFFICE OF LEGAL COUNSEL
P.O. Box 150 / 401 Fort Road
Toppenish, WA 98948
Phone (509) 865-7268

1. INTRODUCTION

1.1 This complaint concerns Defendants' *ultra vires* attempts to (a) regulate the sale of fireworks by Yakama Tribal Members on Yakama trust property under Wash. Rev. Code 70.77 *et seq.*, and (b) enforce such regulations by threatening to take enforcement and prosecutorial action against Yakama Members who were lawfully selling fireworks on Yakama trust property pursuant to Yakama Nation-issued firework permits.

1.2 On June 26, 2018, Defendants issued “cease and desist” notices signed by Klickitat County Sheriff Bob Songers to certain Yakama Members who were selling fireworks on Yakama trust property in accordance with Yakama Nation-issued firework permits. Defendants’ notices threatened a variety of enforcement actions and criminal prosecution if the Yakama Members failed to comply with Washington State fireworks laws within 24 hours.

1.3 When the Yakama Nation executed the Treaty with the Yakamas of June 9, 1855, 12 Stat 951 (*ratified* 1859) (hereafter, the “Treaty of 1855”), it reserved inherent sovereign jurisdiction over its members and its lands, which include off-Reservation trust allotments held by the United States on behalf of the Yakama Nation or its Members (“Yakama Trust Allotments”). The Yakama Nation’s sovereign and Treaty rights cannot be diminished by state laws or regulations.

1.4 Defendants' attempts to regulate and enforce Washington State fireworks laws against Yakama Members who were selling fireworks on Yakama Trust Allotments pursuant to Yakama Nation-issued fireworks permits violate the Yakama Nation's inherent sovereign authority and Treaty-reserved rights to govern its lands and its people, as well as applicable federal law.

1.5 Accordingly, this Court should (a) declare Defendants' regulatory

1 attempts under Wash. Rev. Code 70.77 et seq. improper and unlawful, and (b) enjoin
 2 Defendants from taking any improper *ultra vires* enforcement actions against
 3 Yakama Members lawfully selling fireworks in Indian Country on Yakama Trust
 4 Allotments in accordance with Yakama law.

5 **2. JURISDICTION AND VENUE**

6 2.1 The Court has jurisdiction over this action pursuant to 28 U.S.C. 1331
 7 and 1362, and under federal common law because the Yakama Nation, as a sovereign
 8 and federally recognized Nation, asserts claims arising under the Treaty of 1855.

9 2.2 The Court has jurisdiction to grant the declaratory relief sought
 10 pursuant to 28 U.S.C. 2201, and other relief—including injunctive relief—sought
 11 pursuant to 28 U.S.C. 2202.

12 2.3 Venue is proper in this District pursuant to 28 U.S.C. 1391(b) because
 13 all Defendants are residents of the State of Washington and a substantial part of the
 14 events or omissions giving rise to the claim occurred within this judicial District.

15 **3. PLAINTIFF**

16 3.1 The Yakama Nation is a sovereign, federally recognized Nation and
 17 signatory to the Treaty of 1855. In the Treaty of 1855, the Yakama Nation reserved
 18 all rights not expressly granted to the United States, including its inherent
 19 sovereign rights and jurisdiction over its people and its lands both within and
 20 beyond the exterior boundaries of the Yakama Reservation.

21 **4. DEFENDANTS**

22 4.1 Defendant Klickitat County is a political subdivision of the State of
 23 Washington.

24 4.2 Defendant Klickitat County Sheriff's Office is an agency of Klickitat

County.

4.3 Defendant Bob Songer is Klickitat County's Sheriff, who is sued in his official capacity.

4.4 Defendant Klickitat County Department of the Prosecuting Attorney is an agency of Klickitat County.

4.5 Defendant David Quesnel is a Prosecuting Attorney for Klickitat County, who is sued in his official capacity.

5. FACTUAL BACKGROUND

5.1 The Yakama Nation is a sovereign, federally recognized Native Nation with inherent sovereign and Treaty-reserved rights pursuant to the Treaty of 1855.

5.2 The United States holds public domain allotments located outside the exterior boundaries of the Yakama Reservation in trust for the benefit of the Yakama Nation and Yakama Members (“Yakama Trust Allotments”).

5.3 The Yakama Nation exercises civil regulatory jurisdiction over its members actions, and over actions taken on Yakama Trust Allotments pursuant to its inherent sovereign and Treaty-reserved rights and jurisdiction pursuant to the Treaty of 1855.

5.4 Specific to fireworks, the Yakama Nation has adopted and enforces Yakama laws, regulations, and a permitting regime to regulate Yakama Members' retail sale of fireworks both within the Yakama Reservation and on Yakama Trust Allotments.

5.5 In accordance with Yakama law, the Yakama Nation issued firework permits to certain Yakama Members authorizing the retail sale of fireworks at specified locations both within the Yakama Reservation and on Yakama Trust Allotments, which permits are valid from June 11, 2018 through July 5, 2018.

1 5.6 On June 26, 2018, Defendant Sheriff Bob Songer issued “cease and
 2 desist” notices to Yakama Members lawfully selling fireworks on Yakama Trust
 3 Allotments in accordance with Yakama Nation-issued firework permits. These
 4 “cease and desist” notices cited Wash. Rev. Code 70.77 et seq. (“Washington’s
 5 Fireworks Regulations”) as their basis of authority, and threatened associated
 6 enforcement action under these laws, including criminal prosecution and the
 7 seizure of fireworks.

8 5.9 On the morning of June 27, 2018, Yakama Nation’s legal counsel
 9 unsuccessfully attempted to contact Defendant Songer by phone call to the
 10 Klickitat County Sheriff’s Office to request that Defendant Songer not take
 11 improper *ultra vires* regulatory or enforcement action against Yakama Members
 12 selling fireworks on Yakama Trust Allotments.

13 5.10 Following the phone call to Defendant Songer, Yakama Nation’s legal
 14 counsel received a phone call from Defendant Prosecuting Attorney David Quesnel
 15 who refused the Yakama Nation legal counsel’s request for an immediate in person
 16 meeting in Goldendale, Washington, and stated the County intends to continue its
 17 regulatory and enforcement efforts against Yakama Members selling fireworks on
 18 Yakama Trust Allotments despite the Yakama Nation’s objections.

19 5.11 On June 27, 2018, Yakama Nation’s legal counsel transmitted a letter
 20 to Defendant Quesnel demanding that he immediately work with Defendant
 21 Songer to stop any and all harassment of Yakama Members engaged in the lawful
 22 sale of fireworks on Yakama Trust Allotments.

23 5.7 The Washington’s Fireworks Regulations include an express statement
 24 of legislative intent that Washington’s Fireworks Regulations are intended to be
 25 “regulatory only, and not prohibitory.” RCW § 70.77.111. Thus, Defendants’
 26

attempts to impose and enforce Washington's Fireworks Regulations on Yakama Members are properly understood as regulatory actions.

5.8 The United States has not authorized Defendants to exercise civil regulatory jurisdiction over Yakama Members on Yakama Trust Allotments.

5.12 Defendants' threats to arrest Yakama Members and seize Yakama Member-owned personal property in violation of the Yakama Nation's inherent sovereign and Treaty-reserved rights and jurisdiction poses an imminent threat of harm to the Yakama Nation and its Members.

6. FIRST CLAIM FOR RELIEF

(Violation of the Treaty with the Yakamas of June 9, 1855)

6.1 The Yakama Nation hereby incorporates and reasserts all prior allegations by reference.

6.2 Pursuant to its inherent sovereign rights reserved in the Treaty with the Yakamas of June 9, 1855 (12 Stat. 951), the Yakama Nation exercises civil regulatory jurisdiction over Yakama Members in Indian Country exclusive of Defendants, except as otherwise expressly provided by Congress. Congress has provided no such grant of regulatory jurisdiction to Defendants.

6.2 Defendants' attempts to exercise civil regulatory jurisdiction over Yakama Members acting on Yakama Trust allotments by imposing Washington's Fireworks Regulations on them are *ultra vires* regulatory actions that violate the sovereign rights and authorities reserved to the Yakama Nation in the Treaty of 1855 (12 Stat. 951), and threaten the political integrity of the Yakama Nation. Defendants' regulatory actions are invalid as a matter of federal law.

6.3 Likewise, Defendants' threats against Yakama Members acting on Yakama Trust Allotments to enforce penalties provided for under Washington's

1 Fireworks Regulations would be improper *ultra vires* enforcement actions that
2 would violate the rights reserved to the Yakama Nation in the Treaty of 1855 (12
3 Stat. 951), and threaten the political integrity of the Yakama Nation. Defendants'
4 enforcement of Washington's Fireworks Regulations against Yakama Members
5 acting on Yakama Trust Allotments would violate federal law.

6

7 **7. REQUEST FOR RELIEF**

8 WHEREFORE, the Yakama Nation respectfully requests that this Court
9 order the following relief:

10 A. A declaratory judgment pursuant to 28 U.S.C. 2201 declaring that:

11 (1) Washington's Fireworks Regulations, as set forth in Wash. Rev.
12 Code 70.11 *et seq.*, are properly understood as "regulatory only, and not
13 prohibitory."

14 (2) Defendants do not have civil regulatory jurisdiction over
15 enrolled Yakama Members selling fireworks in Indian country on Yakama Trust
16 Allotments

17 (3) Defendants violated the Yakama Nation's inherent sovereign
18 and Treaty-reserved rights by threatening to unlawfully exercise civil regulatory
19 jurisdiction over enrolled Yakama Members in Indian Country who lawfully sell
20 fireworks under Yakama law and while in possession of a Yakama Nation-issued
21 fireworks permit.

22 B. Both a preliminary and permanent injunction pursuant to 28 U.S.C.
23 2202 enjoining Defendants from exercising civil regulatory jurisdiction over
24 enrolled Yakama Members selling fireworks in Indian Country on Yakama Trust
25 Allotments.

